

1 is, did Golf carry the May 3rd? Yes, it must
2 be on Golf network.

3 All right. So, comparing this
4 national data to this local data, which I
5 assume is what you're trying to do, I do not
6 see the May 3rd day of Quail Hollow on the 48
7 markets.

8 Q So, there's at least one top rated
9 PGA event on Golf Channel that wasn't in your
10 analysis. Correct?

11 A Well, you characterized it as a
12 top event. It would have to be a top event
13 within the 48 markets, not what you're showing
14 me here, which is 210 markets. This are so
15 disparate in the sets of data, as a researcher
16 the first thing I want is comparability of
17 sources, comparability of sources. And these
18 are based on two completely different samples.

19 Q But you would agree that that
20 event, which according to Nielsen national
21 ratings is a top rated event, isn't in your
22 analysis. Correct?

1 A Right, because it's a different
2 area.

3 Q How about the -- going back to
4 Comcast Exhibit --

5 A No, wait a minute. You said the
6 event, the event is here, the day is not here.

7 Q Fair enough. The telecast of that
8 event on that particular day.

9 A That telecast on that day is not
10 here in this other sample.

11 Q Okay. So, let's -- I will
12 represent to you that all of the telecasts
13 highlighted in Exhibit 931 we could not find
14 on your chart of what you considered the top
15 rated events. But let just do one more --

16 A What --

17 JUDGE SIPPEL: Go ahead. I'm
18 sorry. All right, 931 you're saying?

19 MR. TOSCANO: 931. We have
20 highlighted --

21 JUDGE SIPPEL: Difference between
22 931 which is a one-page document, and 924

1 which is a four-page document, and you're
2 talking about page 3 of that four-page
3 document. Am I reading that right?

4 MR. TOSCANO: That's right. I'm
5 also talking now about page 1 of Exhibit 924,
6 where Mr. Brooks, or Tennis Channel has ranked
7 what they call the top rated events on Golf
8 Channel and Tennis Channel.

9 JUDGE SIPPEL: But that's -- did I
10 get the last one right?

11 MR. TOSCANO: Yes.

12 JUDGE SIPPEL: This transcript is
13 going to be awfully difficult to follow the
14 way you're doing this.

15 MR. TOSCANO: Yes, you got the
16 last one right.

17 THE WITNESS: Could I ask a
18 question about this document, since I'm seeing
19 it for the first time?

20 JUDGE SIPPEL: Which document are
21 you talking about?

22 THE WITNESS: I'm sorry. I'm

1 talking about page 3 of --

2 JUDGE SIPPEL: 924.

3 THE WITNESS: 924.

4 BY MR. TOSCANO:

5 Q You're telling me that this is the
6 first time you've seen that document. I will
7 represent to you that that was produced to us
8 by the Tennis Channel as among your relied
9 upon materials for this analysis.

10 A I'm sorry. It's the first time
11 I'm seeing it here. It may have been buried
12 in the documents. My question is this, and I
13 would have to study the whole document to
14 understand this, is this a list of all of the
15 Golf Channel events that I looked at, or only
16 of those that fell within the top 100 that I
17 compiled a table of?

18 Q Mr. Brooks, these are your relied
19 upon materials.

20 A Right.

21 Q Why don't you tell me.

22 A Well, this is four pages. I don't

1 know how many pages were in total in the
2 spreadsheet, or the workbook.

3 Q I will represent to you that that
4 is the complete spreadsheet that was produced
5 to us on this -- in this form as part of your
6 relied upon materials.

7 A Well, and there are other
8 spreadsheets, as well, which aren't showing
9 here, that aren't pointing out -- the reason
10 I'm making this point is there seems to be a
11 fairly limited number of events here. And I
12 know that I looked at something like 250 Golf
13 Channel events in the 48 markets. So, my
14 concern is whether some of these that you are
15 pointing out here may not be on this page, but
16 fell off this page because they were lower
17 rated within the 48 markets.

18 Q Well, let me do this another way.

19 A Sure.

20 Q If you look at the first page of
21 Exhibit 924, do you see anywhere in your
22 ranking of the top rated events on Golf

1 Channel and Tennis Channel this 2009 Quail
2 Hollow Championship telecast on May 3rd?

3 A Actually, the first -- the second
4 page is a continuation of the first page. And
5 on the first and second pages together it only
6 goes down to 134. The full list went deeper
7 than that. So, what I'm questioning, and I
8 don't know the answer to this when looking at
9 this, whether -- and I know that I saw the
10 full list, that there are events below number
11 134 which may, indeed, correspond to this.
12 And I'm particularly suspicious of that,
13 because I don't know why, if we included Quail
14 Hollow, we wouldn't -- and included days one
15 and two, but not day three. Every event that
16 I saw had all the days of the event there.

17 Q But that is not a question that
18 you asked to the Tennis Channel when they
19 provided you with the list on page 3 of
20 Exhibit 924.

21 A Well, I saw more than this from
22 them. That's why I satisfied myself that they

1 were doing it right. I'm seeing part of it
2 here. Do you understand what I'm saying? I'm
3 seeing only down to number 134, and there were
4 more beyond 134 that in this deck I'm not
5 seeing.

6 Q Mr. Brooks, in preparation for
7 testifying about your top rated events
8 analysis today, did you go back and look at
9 your relied upon materials?

10 A Sure, in a general case, but I
11 can't say that I examined every page of every
12 spreadsheet in detail.

13 Q But you didn't review the
14 documents, the list of PGA Tours that you
15 relied upon to get ready to testify today.
16 Right?

17 A No, I don't think that was part of
18 the -- I looked at it when I first got it, but
19 I don't think it was part of my preparation
20 for today, necessarily.

21 Q So, that's why you can't tell
22 whether or not these tournaments aren't on

1 your list. Correct?

2 A I can't attest to why -- well,
3 it's actually one day of a tournament. Why
4 this day of a tournament isn't here, but I can
5 attest to the fact that there's a longer list
6 than this of events that were considered on a
7 48 market basis.

8 Q Is it your testimony that you
9 didn't see this document, Comcast Exhibit 924,
10 in preparation for your testimony?

11 A No, that's not my testimony.

12 Q So, you did see this document.

13 A I saw part -- I saw this portion
14 of a larger document.

15 Q So, it's your testimony there's a
16 larger document that supports your top rated
17 events analysis?

18 A Yes.

19 Q And has that document been
20 produced to Comcast in this litigation?

21 A I don't know. I sent it to
22 counsel. I don't know if it's in here or not.

1 JUDGE SIPPEL: Is there a title to
2 this, this 924, does it have a title on it?

3 All it says is Golf v. Tennis.

4 MR. TOSCANO: Your Honor, this is
5 how -- it was produced to us as a spreadsheet,
6 just the rows of --

7 JUDGE SIPPEL: Exactly like this?

8 MR. TOSCANO: Yes.

9 JUDGE SIPPEL: Exactly like this?

10 MR. TOSCANO: Exactly like this.

11 JUDGE SIPPEL: With no heading on
12 it?

13 MR. TOSCANO: Just like this.

14 THE WITNESS: Your Honor, there
15 are some headings underneath. The spreadsheet
16 itself has a name, which unfortunately doesn't
17 print out when they're printed from the
18 spreadsheet.

19 JUDGE SIPPEL: Oh. I guess we
20 can't have everything.

21 (Simultaneous speech.)

22 JUDGE SIPPEL: I don't want to --

1 I hate to intervene in cross-examination like
2 this, but the only way -- it seems to me the
3 only way you could get the information out of
4 this witness that you're looking for is if, as
5 in his deposition you had -- you knew what he
6 was going to testify to in a general way, and
7 you told him to bring every lick of paper that
8 he used, that compiled -- his work paper or
9 his research paper, sit down in a room for
10 half a day, maybe all day, maybe two days, and
11 go over this stuff that way.

12 What you're doing is giving it to
13 him, as I'm hearing it. He's saying you're
14 giving it to him piecemeal, the result of
15 which he cannot fully answer your questions.
16 Now, I'm not trying to put words in his mouth,
17 or anything, but I'm just telling you up front
18 that that's how I feel, that's how it's
19 looking to me right now.

20 MR. TOSCANO: Well, Your Honor, I
21 didn't have that opportunity to sit down with
22 him in a room. And, in fact, this is what we

1 understand to be what your relied upon in
2 doing this analysis. This was what -- among
3 all the documents that were produced to us,
4 this is the document that matches up with his
5 top rated events analysis.

6 JUDGE SIPPEL: You mean the 924
7 document.

8 MR. TOSCANO: Yes, 924. And
9 that's why I'm surprised that Mr. Brooks is
10 testifying that he didn't look at this in
11 preparation for his testimony. And that is
12 not, in fact, the document he relied on.

13 MR. SCHMIDT: Your Honor, I'm not
14 sure that's an accurate representation of what
15 Mr. Brooks said. I'll note that he was
16 deposed by Mr. Toscano on many of these
17 topics, and many of these spreadsheets. I was
18 not there, but I've, obviously, read the
19 transcript for 383 pages.

20 JUDGE SIPPEL: Well, I mean, I'm
21 just giving you my observation for what it's
22 worth. But whatever you can glean from the

1 record in this case and make your point, it's
2 going to be considered seriously. But I don't
3 know how much further you want to go. Are you
4 challenging conclusions that you reached in
5 his expert testimony based on his answers to
6 these questions today?

7 MR. TOSCANO: I'm challenging the
8 completeness of his top rated events analysis.
9 But, Your Honor, I can move on.

10 JUDGE SIPPEL: All right. I think
11 that would be a good idea.

12 BY MR. TOSCANO:

13 Q Moving on to your top --

14 JUDGE SIPPEL: You know if -- this
15 is a cleanup item later on?

16 MR. TOSCANO: Yes, I'll clean it
17 up later on.

18 JUDGE SIPPEL: Okay. Go ahead.
19 I'm sorry.

20 BY MR. TOSCANO:

21 Q Moving on to your top rated events
22 analysis for 2010, briefly, in 2010 you

1 changed your methodology for counting Tennis
2 Channel events from the methodology that you
3 used in 2009. Right?

4 A Are you pointing me to a place in
5 my report?

6 Q No, I'm just asking you.

7 A Did I change the methodology for
8 top rated events in '9 and '10?

9 Q Yes.

10 A Not that I recall in any
11 significant fashion.

12 MR. TOSCANO: Your Honor, I'd like
13 to show the witness another document, if I
14 may?

15 JUDGE SIPPEL: You may certainly.

16 MR. TOSCANO: And marked as
17 Comcast Exhibit 922.

18 JUDGE SIPPEL: Okay, 922.

19 (WHEREUPON, THE AFOREMENTIONED
20 DOCUMENT WAS MARKED COMCAST
21 EXHIBIT 922 FOR IDENTIFICATION.)

22 MR. TOSCANO: Thank you.

1 BY MR. TOSCANO:

2 Q Mr. Brooks, Comcast Exhibit 922 is
3 the backup for your top 100 events analysis
4 for 2010. Correct?

5 A Yes, it does appear to be true.

6 Q And this time you're not -- this
7 time you know that this is the backup for your
8 analysis. Correct?

9 A Well, it looks like it. I can't
10 attest that a number wasn't changed somewhere.
11 I assume not.

12 Q And I'd like you to -- if you
13 could put Exhibit 924 side-by-side with 922.

14 A Yes.

15 Q And open 922 to the second page.

16 A Okay.

17 Q Now, do you see in Exhibit 924
18 what you have as the 10th top rated event for
19 2009, line 10 --

20 A Yes.

21 Q You have the Australian Open.
22 Correct?

1 A On the 1st of February, yes.

2 Q And that is a six-hour block of
3 time for the Australian Open. Correct?

4 A 9a to 3p, that's correct.

5 Q And that's not particular matches.
6 Correct?

7 A That's my understanding, what the
8 coverage was by the Tennis Channel on that
9 day.

10 Q Okay. And let's look again, for
11 example, at the next one, the next Tennis
12 Channel event on that list at 20. And that's
13 a seven-hour block of time from the U.S. Open.
14 Correct?

15 A Yes, which would have been the
16 coverage by the Tennis Channel on this date.

17 Q So, if you now look at the 2010
18 analysis, do you see that the Tennis Channel
19 events are broken down into individual tennis
20 matches? Do you see that?

21 A Well, I'm seeing that they're,
22 again, on discrete days. For example, the

1 first one, which comes in at -- well, it
2 doesn't give the rank here, but line 17 is on
3 9/5 from 7:15 p.m. to 11 p.m.

4 Q And that's a single match, not a
5 block of time. Correct?

6 A I don't know, but I would assume
7 it was. Yes, it's prime time.

8 Q But doesn't it also give the
9 players in that match for each of the Tennis
10 Channel matches?

11 A Yes, that's why I assume it was
12 probably a single match. Yes.

13 Q And, in fact, the time of these
14 events is shorter than the blocks of time in
15 Comcast Exhibit 924 for the Tennis events in
16 2009. Correct?

17 A Well, I would have to analyze them
18 individually to agree or disagree with that.
19 I'm not sure, just looking at this.

20 Q So, my question to you is, why did
21 the methodology change from 2009, when blocks
22 of time were used, to 2010 when only

1 individual matches were used?

2 A The rule that I had was that it
3 should be whatever the coverage was on that
4 day. So, if it happened to be in one time
5 they had two matches, and the other they had
6 one match, that would be legitimate. It was
7 whatever they carried, basically.

8 In terms of this document that I'm
9 looking at here, it appears to be discrete
10 days. And I have to examine it all to be sure
11 of that, so it seems to me what was carried on
12 9/5, what was carried on 1/30, what was
13 carried on 9/10 and so forth, whatever that
14 happened to be.

15 Q But to be clear, your instructions
16 to the Tennis Channel were to give you the
17 blocks of time as they were on Tennis
18 Channel's programming schedules. You didn't
19 tell them to break it up into matches. Right?

20 A No, I told them to give me what
21 ran on that day.

22 MR. TOSCANO: Your Honor, I'd like

1 to show the witness Comcast Exhibit 919.

2 (WHEREUPON, THE AFOREMENTIONED
3 DOCUMENT WAS MARKED COMCAST
4 EXHIBIT 919 FOR IDENTIFICATION.)

5 JUDGE SIPPEL: Thank you.

6 BY MR. TOSCANO:

7 Q Mr. Brooks, in giving Tennis
8 Channel that instruction, did you actually
9 look at Tennis Channel's schedules?

10 A At the cover of the Tennis Channel
11 schedule, but I did not cross check it against
12 this list that you're giving me here.

13 JUDGE SIPPEL: This says Schedule
14 for Tennis Channel, Week Commencing 1 to June
15 6, 2010.

16 BY MR. TOSCANO:

17 Q So, you didn't actually look at
18 the Tennis Channel schedules from 2009 to make
19 sure that Tennis Channel had followed your
20 instructions regarding how to break up the
21 programming in the top rated events analysis
22 for that time. Correct?

1 A I looked -- I spot checked some
2 schedules, but I did not look at them all.
3 That was my normal procedure, actually.

4 MR. TOSCANO: Give me one second.
5 I think --

6 BY MR. TOSCANO:

7 Q And what does it -- what do you
8 mean when you say you "spot checked it?"

9 A Well, I told them both for this
10 purpose and for another purpose of proportion
11 of schedule, it was devoted to different types
12 of programming, that I wanted to see what the
13 backup schedules were. I wanted to make sure
14 that they, in fact, had backup schedules, and
15 they seemed to comport with the kind of data
16 that they were giving me. So, I reviewed
17 that. There were, in fact, 52 weeks of
18 scheduling on a disk I think they sent me.
19 And it did seem to show the kinds of
20 preponderance of live events that I expected,
21 but I did not go back and check individual
22 days against individual days in the way that

1 you're explaining here.

2 Q Do you see looking at Comcast
3 Exhibit 922, second page, the list of what you
4 treated as the top rated events, because
5 that's what Tennis Channel gave you. Do you
6 see on line 20 there is Bellucci-Nadal match
7 from the French Open on May 31st, 2010.

8 A Could I take a minute just to look
9 at this, because this is something that I
10 haven't seen for quite some time. Could you
11 give me just a moment to look at this?

12 Q Sure. Of course.

13 A If you wouldn't mind. Okay. Thank
14 you very much.

15 Q So, again, directing your
16 attention on Comcast Exhibit 922 to row 20,
17 number 20, is a Tennis Channel French Open
18 match, Round of 16 Bellucci-Nadal broadcast on
19 May 31st, 2010. Correct?

20 A Yes, that what it says.

21 Q And Tennis Channel has broken this
22 broadcast into the 10:15 to 12 mean portion

1 that corresponds to that single match.

2 Correct?

3 A Is that the -- the printing is a
4 little obscure here. Is that the first column
5 on the colored schedule that you're giving me?

6 Q That's exactly what I was going to
7 ask you, whether if you then look at Comcast
8 Exhibit 919, the actual Tennis Channel program
9 schedule for May 31st, 2010 doesn't Tennis
10 Channel, itself, have a large block of time
11 that is longer, significantly longer than the
12 match that they provided to you?

13 A Again, this is very difficult to
14 read, it may be just my eyesight.

15 JUDGE SIPPEL: This is on what,
16 919?

17 THE WITNESS: This is 919. That's
18 correct. But I believe that's 5/31 on the
19 first column, it's a Monday. I can see that.
20 And I assume what you're referring to is the
21 orange shaded event for the times for that.

22 BY MR. TOSCANO:

1 Q Actually, I'm referring to the
2 blue shaded event on the top that goes from 6
3 a.m. to noon.

4 A I was getting there. Sorry. The
5 blue at the top and the orange further down.
6 And is what you're asking, why the blue -- are
7 you saying that the orange is included, but
8 the blue is not?

9 Q No, I'm simply saying that the
10 blue is a six-hour block of time that the
11 Tennis Channel has taken a portion of for your
12 top rated events analysis. Do you see that?

13 A Well, no, that's not the portion,
14 I don't believe. That's in the early morning.
15 Right? So, in what I'm seeing over here on
16 the other thing you've given me is from 10:15
17 a.m. until noon time. Right?

18 Q Right. And --

19 A So, this starts it looks like 6
20 a.m. at the morning there?

21 Q Yes, and it goes to noon, the blue
22 spot. Do you see the blue spot goes down to

1 noon?

2 A Right.

3 Q So, on Tennis Channel's actual
4 program schedule, they have a six-hour block
5 of time, just like the methodology that you
6 used in 2009. But they have taken a single
7 match and given you that for your 2010 top
8 rated events analysis. Do you see that?

9 A This is a good example of why
10 researchers need to look at data more
11 completely than in pieces such as this. I
12 don't -- I would have to compare not only for
13 this, first of all, in a readable form I would
14 hope, with what was used in 2010. But I would
15 have to look at the comparable schedules for
16 2009 for the year -- for the list of ratings
17 that were produced for 2009 to determine
18 whatever the labeling was, names of players
19 aren't given here, but I don't know if they
20 were, how this would line up with this. I
21 don't know if this schedule, which you're
22 showing me for one particular day, is

1 replicable for all of these or not. I don't
2 know if what was done in 2010 -- all of those
3 things, I would need to compare in order to
4 agree with your question. I can't assume that
5 that's correct on these pieces of data.

6 Q So, you don't know one way or the
7 other whether Tennis Channel followed your
8 instructions regarding how to select events in
9 2010. Correct?

10 A From these pieces of data, I can't
11 answer that.

12 Q And not from anything else you did
13 as part of your top rated events analysis.
14 Correct?

15 A Sure, I could go back in my files
16 in front of me, unfortunately, we would
17 probably have to take a recess for a couple of
18 hours, to dig out all of those schedules, and
19 all of these lists and make line-by-line
20 comparisons for both years, not just for one
21 year.

22 JUDGE SIPPEL: I want to just note

1 for the record that this just has -- this
2 witness has just explained on the record is
3 that comparing data on 919 with data on page
4 2 of 922, that was that colloquy that you just
5 finished.

6 THE WITNESS: That is correct. I
7 was addressing --

8 JUDGE SIPPEL: Well, I'm worried
9 about the record. We're going to read this
10 six months from now --

11 (Laughter.)

12 THE WITNESS: Let me go.

13 JUDGE SIPPEL: Well, I hope so.

14 BY MR. TOSCANO:

15 Q Before I move on, I'd like to just
16 go back and do a little cleanup on the 2009
17 analysis.

18 A Sure.

19 Q Do you remember at your deposition
20 I asked you a number of questions about how
21 you had conducted your 2009 top rated events
22 analysis, and what you had relied upon, and

1 you weren't able to answer those questions. Do
2 you recall that?

3 A I would have to refresh myself on
4 exactly what the question was, and what the
5 answer was. It was long deposition.

6 Q Can I direct your attention to
7 page 194 --

8 A Sure.

9 Q -- of your deposition. Do you see
10 halfway down that page --

11 A Right.

12 Q -- page 194, where I asked you,
13 "Please take a look at what's been marked as
14 Exhibit 36 and tell us what that is?" And you
15 responded, "It's headed Golf v. Tennis, and
16 there's a subhead, Tennis Channel/Golf Channel
17 Program Ranker on the left, and Tennis
18 Channel/Golf Channel Program Ranker on the
19 right, too." And you continued, "Do you see
20 that that describes Comcast Exhibit 924, the
21 document with the green highlighting that we
22 were talking about earlier."